IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRP.No. 2616 of 2001(H)

RCA.24/1997 OF RENT CONTROL APPELLATE AUTHORITY, PALAKKAD,
RCP.11/1995 OF RENT CONTROLLER, PALAKKAD.
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PETITIONER/APPELLANT/1ST RESPONDENT:

T.P. SATHYABHAMA,
W/O. BHASKARAN, ARUKUDY,
KOTTEKKAD AMSOM, PALAKKAD TALUK.

BY ADV. SRI.N.N.SUGUNAPALAN.

RESPONDENTS/RESPONDENTS/PETITIONER:
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1. **R. SADANANDA RAO, S/O. RAMAKRISHNA RAO,**
   MURALI NIVAS, KUNNATHURMEDU,
   KUNNANUR AMSOM, PALAKKAD TALUK
   AND DISTRICT.

2. **M.G. RAMACHANDRAN,**
   SIVARANJINI LOTTERY AGENCIES,
   KANNARATHERUVU, KOPPAM AMSOM,
   PALAKKAD TALUK.

BY ADV. SRI.V.CHITAMBARESH,
SRI. S. KRISHNA PRASAD.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P. NO. 5542/2001 IN C.R.P. NO. 2616/2001

DISMISSED

SD/- J.B.KOSHY, JUDGE.

04/07/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 2616 of 2001

ORDER

Balachandran, J.

The first counter petitioner In R.C.P.No.11/95 on the file of the Rent Control Court, Palakkad is the revision petitioner. The first respondent/ landlord filed the rent control petition aforesaid against the petitioner and the second respondent for eviction alleging grounds under Sections 11(2)(b), 11(4)(i) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). Claim for eviction made under Section 11(2)(b) of the Act was negatived by the Rent Control Court. Claim for eviction made under Section 11(4)(v) of the Act was also rejected for want of evidence, but eviction was ordered by the Rent Control Court under Section 11(4)(i) of the Act, accepting the case of the first respondent/landlord that the petitioner/tenant

sublet a portion of the scheduled building to the second respondent and he is conducting lottery business therein. Against the order granting eviction under Section 11(4)(i) of the Act, the first counter petitioner filed R.C.A.No.24/97 and the petitioner in the RCP filed R.C.A.No.44/97 against disallowing eviction under Sections 11(2)(b) and 11(4)(v) of the Act before the Rent Control Appellate Authority, Palakkad. The appellate authority dismissed both the appeals concurring with the findings of the Rent Control Court.

2. It is contended before us by the learned counsel for the petitioner that there was no sub lease of any portion of the scheduled building to the second respondent/second counter petitioner; that the husband of the petitioner was conducting a Travel Agency in the name and style 'Sathya Travels' and was also running lottery business in the scheduled building and that the second respondent was only an employee to assist her

husband in the conduct of lottery business. The petitioner had not produced any evidence to establish that the lottery business was being conducted by her husband. On the other hand, Exhibit A3 lottery ticket was produced on the side of the first respondent/landlord to prove his case. On the reverse of Exhibit A3 ticket there was a seal, which contained the letters MGR as the address of the lottery agent and that is admitted to be the name of the second respondent, who, according to the landlord, is the sub tenant under the petitioner. Though the petitioner filed objection to the RCP, she did not enter the witness box to swear to her case. The evidence tendered by the second respondent/second counter petitioner as RW1 is to the effect that the lottery business is stopped and now he is conducting sale of bags. As concurrently found by the authorities below, the available evidence shows that the lottery business was being run by the second respondent and not by

the husband of the petitioner, when she was the tenant of the building. A portion of the scheduled building having been found utilised by the second respondent exclusively for conduct of lottery business conducted by him, the case of the first respondent/landlord that a portion of the scheduled building was sub let by the petitioner to the second respondent stands proved, especially in the absence of any explanation from the side of the petitioner as to how the second respondent was found in possession of a portion of the scheduled building exclusively by himself for conduct of lottery business run by him. There is no reason, in the circumstances, for this Court to interfere in the concurrent order of eviction passed by the authorities below in this revision. In the circumstances, this revision is devoid of merit and deserves to be dismissed.

3. It is finally urged by the counsel for the petitioner that reasonable time be granted to the

petitioner to surrender vacant possession of the scheduled building to the first respondent/ landlord. The request so made is reasonable and deserves to be considered favourably.

In the result, we dismiss this revision. At the same time, we grant the petitioner time till 5.10.2007 to surrender vacant possession of the scheduled building to the first respondent/landlord on the following conditions:

i. that she shall deposit the entire arrears of rent, if any, in the execution court with a detailed statement as to its correctness within three weeks from today.

ii. that she shall file an affidavit before the execution court within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that she will surrender vacant possession of the scheduled building to the first respondent/landlord positively on or before 5.10.2007 and that she will continue to pay the

future monthly rents on the due dates itself till she actually surrenders vacant possession of the scheduled building to the first respondent/landlord and

iii. that in case the petitioner fails to comply with the above conditions, she shall not be entitled to the benefit of continuing in occupation of the scheduled building till 5.10.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against her.

(J.B.Koshy, Judge)

4th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No.2616 of 2001

ORDER

4th July, 2007